



Appeal Decision

Site visit made on 25 November 2019

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 12th January 2020

Appeal Ref: APP/E5330/C/19/3222287

Land at 243 Greenwich High Road, Greenwich, London SE10 8NB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Mahbub Rahman Rahman against an enforcement notice issued by Royal Borough of Greenwich Council.
 - The enforcement notice was issued on 7 January 2019.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised installation of an external extractor unit to the rear of the Property within the last four (4) years.
 - The requirements of the notice are:
 - (i) to permanently remove the unauthorised extractor unit from the Property; and
 - (ii) to permanently remove from the Property all debris and spoil generated as a result of the requirement (i) above.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the installation of an external extractor unit to the rear of the Property on land at 243 Greenwich High Road, Greenwich, London SE10 8NB as shown on the plan attached to the notice, subject to the condition in the attached schedule.

Preliminary Matter

2. A retrospective planning application for "Retention of rear extractor unit" was refused by the Council on 2 July 2019. The reason for refusal was that the extractor unit was considered to be unacceptable as insufficient information had been provided to determine the impact of the unit on neighbouring properties and occupiers in terms of noise, odour and vibration impacts.

Ground (a) and the deemed planning application

Main issue

3. The main issue in this appeal is the effect of the external extractor unit on the living conditions of neighbouring occupiers as regards noise and odour.

Reasons

4. The appeal property is a ground floor hot food takeaway within a commercial precinct on Greenwich High Road. There are two floors of dwellings above several of the commercial units in the precinct. Those above the appeal unit face onto the precinct and do not extend as far to the rear of the building as the rear wall of the takeaway where the external extractor unit is located. To the rear of the property is a service road backing onto a railway line, and beyond that a row of residential properties on Straightsmouth.
5. I observed on my site visit that the external extractor unit is visible as a relatively short section of cylindrical ducting emerging horizontally from the ground floor rear elevation of the appeal property and curving upwards.
6. The Council says that numerous complaints have been received from local residents, and that the extract system currently has no measures relating to noise suppression or odour control. The appellant's case is that the agreement and implementation of such measures, secured through a condition, would make the development acceptable.
7. The National Planning Policy Framework (paragraph 54) says that decision-makers should consider whether otherwise unacceptable development could be made acceptable through the use of conditions. It seems to me that a commercial catering extract system in the appeal context of a mixed commercial and residential area need not be inherently unacceptable, and that it is unsurprising in this case that the absence of noise and odour control measures commonly associated with such systems has caused nearby residential occupiers to experience adverse impacts. I find therefore that granting planning permission subject to a condition requiring a scheme of adequate control measures, submitted to and agreed by the Council, would not cause harm to the living conditions of neighbouring occupiers. As such, there would be no conflict with Policies DH1 and E(a) of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (2014) which together, and amongst other aims, seek to protect living conditions.
8. The purpose of the attached condition is to require the appellant to comply with a strict timetable for dealing with a scheme for noise and odour control which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the Council or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.

Other Matter

9. The appeal site lies within the West Greenwich Conservation Area (CA). I have applied the statutory duty in Section 72(1) of the Planning (Listed Buildings

and Conservation Areas) Act 1990 and paid special attention to the desirability of preserving or enhancing the character or appearance of the CA by attaching considerable importance and weight to that desirability.

10. The extractor unit is located to the rear of a modern building, which itself does not contribute to the significance of the CA, adjacent to a service area and railway line. In this context, even were the unit's ducting to be reasonably extended through control measures agreed with the Council, it would not be particularly visible or striking and would be set far enough away from the dwellings on Straightsmouth beyond the railway line so as not to cause visual harm. Therefore, the character and appearance of the CA would be preserved.

Conclusion

11. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (f) does not therefore need to be considered.

Andrew Walker

INSPECTOR

Schedule: Condition

- 1) The external extractor unit hereby permitted shall be removed within 14 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 1 month of the date of this decision a scheme for noise and odour control in respect of the extractor unit shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.